

60,130-1752; 03MRA0141

REMARKS

Claims 24-40 are pending in the application including independent claims 24 and 36. Claims 1-23 have been cancelled. New claims 41-44 have been added. Claim 34 is withdrawn as being drawn to a non-elected species. Claims 24-33 and 35-40 read on the elected species. New claims 41-44 read on the elected species and are generic claims.

Claims 24-27, 32-33, and 35-39 stand rejected under 35 U.S.C. 102(b) as being anticipated by Hockley (US 5699880). Claim 24 recites that the overstroke sensor is mounted to the housing portion, which comprises a fixed component adapted for attachment to a vehicle structure. Hockley does not disclose this feature. The examiner argues that element 30 of Hockley can be considered a housing because it overlays member 18. Applicant respectfully asserts that it is not reasonable to interpret element 30 of Hockley as corresponding to the claimed housing.

Claims in a patent application are to be given their broadest *reasonable* interpretation, with this interpretation being consistent with the specification of the patent application (see, for example, In re Zletz, 893 F.2d 319,321; 13 USPO2d 1320, 1322 (Fed. Cir. 1989)). Further, the terms in the claims should be construed as one of ordinary skill in the art would construe them (see, for example, Specialty Composites v. Cabot Corp. 845 F.2d 981, 986; 6 USPOd 1601, 1604 (Fed. Cir. 1988)). Further, as discussed in Phillipps v. AWH Corp., 415 F.3rd 1303, 1315; 75 USPO2d, 1321, 1327 (Fed. Cir. 2005), the claims do not stand alone and are part of a fully integrated written instrument with a specification that concludes with the claims. Thus, the claims must be read in view of the specification, of which they are a part. Thus, the examiner's interpretation can be broad but it must be reasonable.

Hockley discloses a brake adjustment indicator that comprises a bracket 30, a first reference pointer 32, a second reference pointer 34, and an indicator 36. See col. 4, lines 34-36. The bracket 30 is mounted to a vehicle frame member 22. Applicant's brake housing is clearly shown in Figures 1 and 6-8 and is described in the accompanying specification. The brake housing clearly houses brake components. One of ordinary skill in the art simply would not consider the bracket 30 of Hockley as corresponding to the claimed housing.

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The examiner argues that the bracket 30 is considered a housing because it overlays member 18, however, just because one element is overlapping with another element does not make it a housing. According to the Dictionary Of Engineering, McGraw-Hill, 1997, the term housing means, "A case or enclosure to cover and protect a structure or a mechanical device." The bracket 30 of Hockley is clearly not a case or enclosure that provides cover and protection, and one of ordinary skill in the art would not construe bracket 30 as corresponding to the claimed housing. Thus, claims 24-27, 32-33, and 35 are not anticipated by Hockley. For similar reasons, method claims 36-39 are also not anticipated by Hockley.

Claims 28-31 and 40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hockley in view of White et al. (US H2026H). The examiner argues that it would have been obvious to have provided the sensor of Hockley with a signal sent to a controller as taught by White "to prevent the need for manual inspection of the indicator." Applicant respectfully disagrees.

The examiner's proposed modification cannot render the prior art unsatisfactory for its intended purpose and cannot change the principle of operation of the base reference. See MPEP 2143.01. "A further advantage of the instant invention is that the indicator means and the reference means preferably interact when the indicator means extends past a reference means. This provides a positive visual signal, independent upon the angle from which the adjustment gauge is observed, that the brake system requires adjustment." Col. 3, lines 45-50. Hockley's purpose is provide a *visual* brake indicator that operates to indicate adjustment irrespective of the angle from which it is viewed. The examiner is arguing that Hockley should be modified to use a sensor to generate a signal as taught by White to prevent the need for manual inspection. This would render Hockley unsatisfactory for its intended purpose and would change the principle of operation of Hockley. Thus, the rejection of Hockley modified by White is improper and must be withdrawn.

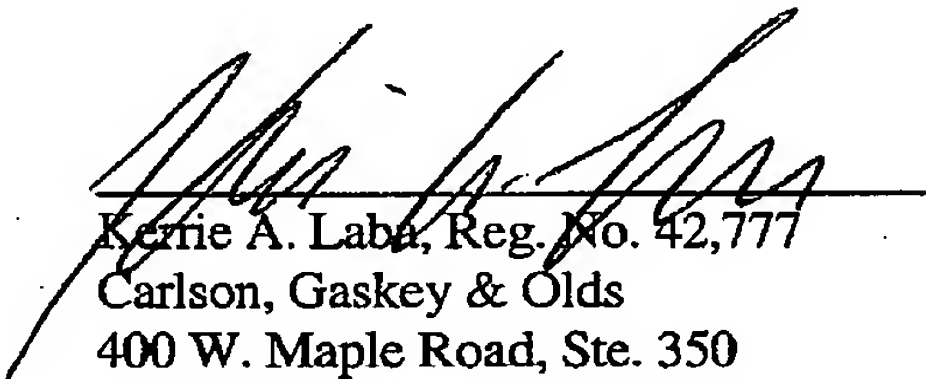
Finally, for the reasons set forth above, new claims 41-44 are also allowable over the recited references.

Applicant asserts that the claims are allowable over the recited references, and respectfully request an indication of such. The Commissioner is authorized to charge Deposit

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Account No. 50-1482 in the name of Carlson, Gaskey & Olds for one additional dependent claim. Applicant believes that no additional fees are due; however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional claim fees.

Respectfully submitted,



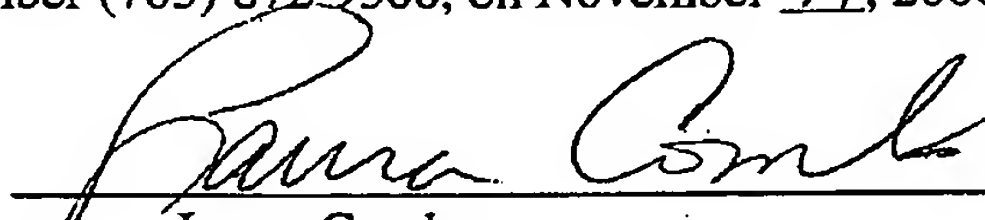
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CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States patent and Trademark Office, fax number (703) 872-9306, on November 14, 2006.


Laura Combs